

**SECOND AMENDMENT TO AGREEMENT
FIRATO SERVICE COMPANY, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, FIRATO SERVICE COMPANY, INC, a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on August 24, 2016.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of June 4, 2014, for services for a maximum compensation of Four hundred nine thousand one Hundred Ninety-five dollars (\$409,195) ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "A" to this Agreement.
3. The CITY and SERVICE PROVIDER entered into a "First Amendment to Agreement" made as of June 9, 2016, under which the maximum compensation under the MAINTENANCE SERVICE AGREEMENT, as amended, was increased to Six Hundred Thirty-Six Thousand One Hundred Fourteen dollars (\$636,114). First Amendment thereto are attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by SERVICE PROVIDER shall consist of the following additional services set forth in Exhibit "B":

Cleaning of the large locker rooms will be completed six (6) days per week during the slow season at the Aquatics Center.

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed six hundred fifty-five thousand sixty-eight Dollars (\$655,068).

2. **Conflicts.** In the event of a conflict between the terms and provisions of this Second Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT or any earlier amendment , the terms of this Second Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

 City Clerk
 Date: _____

 City Manager
 Date: _____

APPROVED AS TO FORM:

FIRATO SERVICE COMPANY, INC.

 City Attorney
 Date: _____

 By: *[Signature]*
 Title: CEO Rich Firato
 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: _____

 By: *[Signature]*
 Title: CEO JULIENE M. FIRATO
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: 8/11/16

128-09-1A 009

**FIRST AMENDMENT TO AGREEMENT
FIRATO SERVICE COMPANY, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on June 9, 2016 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, FIRATO SERVICE COMPANY, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on June 1, 2016.
2. The CITY and CONSULTANT entered into that "Maintenance Services Agreement" made as of June 4, 2014, for consultant services for a maximum compensation of four hundred nine thousand one hundred ninety-five dollars("AGREEMENT"). The AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the CONSULTANT AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:

A. Paragraph 2 shall be amended and replaced in its entirety by the following:

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from July 1, 2014, until June 30, 2017. The City Manager is authorized to extend the term of this Agreement for a maximum period of two years. Any such extension shall be in writing and signed by both parties to this Agreement."

B. Paragraph 3 shall be amended by adding the following:

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in Exhibit "D":

C. Paragraph 4.1 shall be amended and replaced in its entirety by the following:

"4.1. **Amount.** Compensation under this Agreement shall not exceed six hundred thirty-six thousand one hundred fourteen Dollars (\$636,114).

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

Denny


City Clerk
Date: 6/9/16

CITY OF MORGAN HILL



City Manager
Date: 6/9/16

APPROVED AS TO FORM:

for


City Attorney
Date: 06/08/16

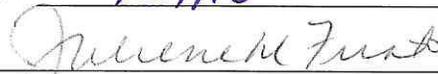
FIRATO SERVICE COMPANY, INC.



By: _____
Title: CEO

Print Name and Title of Signer.
If Corporate: Chairman, President or Vice President

Date: 5/24/16



By: _____

Title: Juliene M. Firato CFO
Print Name and Title of Signer.
If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 5/23/16

128-09-14-009

Exhibit A

MAINTENANCE SERVICE AGREEMENT FIRATO SERVICE COMPANY, INC.

THIS AGREEMENT is entered into and becomes effective on June 16, 2014 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Firato Service Company, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on June 4, 2014.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2016 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for two additional one year periods. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Janitorial Services as further described in Exhibit A.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$409,195.00. Total compensation under this Agreement shall not exceed four hundred nine thousand one hundred ninety five dollars and shall be billed based on the rate and basis set forth in Exhibit B.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER.
6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work

and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement.

7. **Insurance Requirements.**

7.1. **Commencement of Work.** SERVICE PROVIDER shall not commence work under this Agreement until it has obtained CITY approved insurance. For general liability insurance policies, SERVICE PROVIDER shall provide CITY, prior to commencement of work, with a separate endorsement which states that the policy contains the following language:

- The CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds; and,
- the insurer waives the right of subrogation against CITY and CITY'S elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,
- Insurance shall be primary non-contributing.

SERVICE PROVIDER shall furnish CITY with copies of all policies or certificates subject to this Agreement, whether new or modified, promptly upon receipt. No policy subject to this Agreement shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY.

7.2. **Workers' Compensation Insurance.** SERVICE PROVIDER and all subcontractors shall maintain Workers' Compensation Insurance, as required by law.

7.3. **Insurance Types and Amounts.** SERVICE PROVIDER shall maintain comprehensive general liability insurance; professional errors and omissions liability insurance (required for professional and technical service consultants only); and automobile insurance each with policy limits of at least \$1,000,000 per occurrence for general liability, \$1,000,000 per accident for automobile liability and \$1,000,000 per claim for professional errors or omissions (for professional and technical service consultants only).

7.4. **Acceptability of Insurers.** All insurance required by this Agreement shall be carried only by responsible insurance companies licensed and admitted, or otherwise legally authorized to carry out insurance business, in California with a current A.M. Best's rating of no less than A:VII.

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.**

9.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national

origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

- 9.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
10. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.
11. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.
12. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Firato Service Company, Inc.
17485 Monterey Rd, Suite 200
Morgan Hill, CA 95037

Address of CITY is as follows:

Community Services Director	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.
15. **Maintenance of Records.**
- 15.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to

services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

- 15.2. Access to and Audit of Records. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 15.3. Ownership of Work Product. All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
 - 20.1. Defense and Indemnification. SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
 - 20.2. Exceptions. SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

20.4. Right to Offset. CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only a subsequent mutual written agreement executed by CITY and SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

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25. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:-

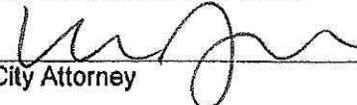


 City Clerk/Deputy City Clerk

Michelle Wilson

 Print Name

Date: 10/23/14

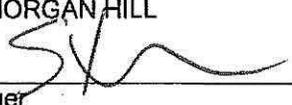
APPROVED AS TO FORM:


 City Attorney

for Renee Gurza

 Print Name

Date: 06/12/14

CITY OF MORGAN HILL


 City Manager

Steve Rymer

 Print Name

Date: 6/16/14

Firato Service Company, Inc.


 By:

Title: CEO Rich FIRATO

 Print Name and Title of Signer.
 If Corporate: Chairman, President or Vice President

Date: 6-3-14



 By:

Title: Juliene M. Firato CFO

 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6/3/14

**EXHIBIT A
SCOPE OF SERVICES**

SERVICE PROVIDER agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. **SERVICE PROVIDER** shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. **SERVICE PROVIDER** also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

The Contract Documents are comprised of the Request for Proposals (issued by the CITY in April, 2014); the Instructions to Bidders; attachments, addenda, if any; the Proposal submitted by the **SERVICE PROVIDER** (with the changes noted below,) and attachments thereto; and this Contract.

Changes to Firato Services' Base Bid as mutually agreed upon:

Community and Cultural Center service frequencies will be as indicated in the bid except:

1. Kitchen shall be serviced 5 days per week
2. Staff office areas shall be serviced 3 days per week
3. Day porter services will be limited to Wednesdays year round from 2 pm to 4 pm with service provided by a single staff member.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

Firato Cost Summary

Group 1

CCC and Playhouse	\$50,449.96
Friendly Inn	\$11,171.04
CCC Day Porter	\$4,716.00
Subtotal	\$66,337.00
Discounts @ 2%	(\$1,326.74)
Group 1 Total	\$65,010.26

Group 2

CRC	\$60,538.32
CRC Day Porter Weekdays	\$23,606.88
CRC Day Porter Weekends	\$6,295.20
Aquatics Center	\$19,347.36
Aquatics Day Porter	\$12,810.00
Aquatics Swim Meet	\$6,385.25
Subtotal	\$128,983.01
Discounts @ 2%	(\$2,579.66)
Group 2 Total	\$126,403.35

Group 3

Public Works Corporation Yard	\$13,316.69
Subtotal	\$13,316.69
Discounts @ 1%	(\$133.17)
Group 3 Total	\$13,183.52

Total	\$204,597.13
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**EXHIBIT C
SCHEDULE OF PERFORMANCE**

As indicated in contract documents

Exhibit D - Revised Scope of Services

Scope to include all of the services specified in the original agreement dated June 4, 2014 and the following additional services and clarifications:

1. Concrete floors at the Centennial Recreation Center to be stripped and waxed annually using approved materials and methods.
2. Replace air fresheners in the locker rooms and lobby of the Centennial Recreation Center monthly.
3. At the Centennial Recreation Center, clean lifeguard room and restroom weekly.
4. For wall cleaning activities at all facilities, the term "spot clean" is understood to include the removal of all fingerprints and marks.
5. Section 1-5 of the Special Conditions of the Request for Proposals (as issued April, 2014) is replaced in its entirety with the following:

"1-5. CORRECTIVE WORK The Contractor shall perform the work to the satisfaction, of the Maintenance Manager or designated representative. Inspections may be made by the City any time and request from the Contractor corrective work. If corrective work is required, the City will provide a written list of items or will provide photos documenting the conditions requiring corrective work. The Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, as determined by the Maintenance Manager, the City may perform the work using others and deduct the cost from the Contractor's payment. Contractor shall operate and maintain an e-mail address at which the City may send inspection reports largely consisting of photos taken of areas that the Service Provider maintains. The e-mail address must have sufficient capacity to accept numerous inspection reports from the City without delay or rejection."
6. For the quality assurance inspections required per section 1-8 of the Special Conditions of the Request for Proposals (as issued April, 2014), contractor understands the importance of its quality assurance inspections. Failure to turn in inspections and corrective action plan by the Contractor by the 10th of the following month will result in monthly payment being withheld until inspections are turned in and a \$100 deduction from the monthly payment per facility.